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NO. COA02-803

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2002

STATE OF NORTH CAROLINA

v.

Durham County
No. 00 CRS 068631

WINSLOW MONTE BROWN

Appeal by defendant from judgment dated 19 February 2002 by Judge Abraham Penn Jones in Durham County Superior Court. Heard in the Court of Appeals 30 December 2002.

Attorney General Roy Cooper, by Special Deputy Attorney General T. Lane Mallonee, for the State

James M. Bell for defendant appellant.

GREENE, Judge.

Winslow Monte Brown (Defendant) appeals the trial court's denial of his motion to suppress his statements to the police. Judgment was entered against Defendant on 19 February 2002 consistent with an *Alford* plea agreement in which Defendant pled guilty to robbery with a dangerous weapon but reserved the right to appeal the trial court's denial of his motion to suppress.

On 28 December 2000, at approximately 12:15 p.m., Defendant was spotted entering a vehicle previously used in a robbery and was placed under arrest. Defendant was handcuffed and placed in the

back of a patrol car. Defendant was then transported to the Durham Police Department an hour or two later and placed in an interview room. At 5:42 p.m., Corporal John Shelton (Corporal Shelton) of the Durham Police Department informed Defendant of his Miranda rights, and Defendant signed a form waiving those rights and agreeing to be interviewed by the police. Defendant subsequently signed an Acknowledgment of Gang Affiliation form and accompanying questionnaire, indicating he was a member of a gang called "Friend of Folk." Corporal Shelton again advised Defendant of his Miranda rights at 8:00 p.m. Defendant then gave Corporal Shelton an oral statement in which he admitted to the robbery. Corporal Shelton took notes and compiled a written statement outlining Defendant's confession. Corporal Shelton read the written statement to Defendant, and Defendant signed the statement at approximately 10:00 p.m. Defendant was taken before a magistrate at approximately 12:00 a.m., at which time an arrest warrant was issued against him.

Prior to trial, Defendant moved to suppress the statements he had made to the police. In his motion, Defendant denied having been informed of his Miranda rights. Defendant further argued the statements were not freely, knowingly, and voluntarily made. Finally, Defendant alleged a violation of N.C. Gen. Stat. § 15A-501(2), arguing he was not brought before a judicial official without unnecessary delay.

At the hearing, Defendant stated he was intoxicated on the day of his arrest. Defendant denied signing the waiver of rights form

or ever talking with Corporal Shelton. Defendant admitted that his initials were on the gang affiliation form and that his signature was on the confession. Defendant, however, denied making the statements contained on the form and questionnaire.

At the motion to suppress hearing, Corporal Shelton testified Defendant had been informed of his Miranda rights at both 5:42 p.m. and at 8:00 p.m. Corporal Shelton also indicated Defendant did not appear to be under the influence of any impairing substance. The reason Defendant was not immediately taken to the police station was because the police were still locating other suspects and were trying to determine Defendant's level of involvement. After locating other suspects, the police first had to find accommodations for three children found with the suspects. The police also conducted searches of the suspects' vehicles, the hotel where they were found, and the hotel parking lot. Another reason Defendant was not immediately questioned was the fact that the investigator on the case was on vacation and the investigation file had to be located and reviewed.

Based on this testimony, the trial court found Defendant was not intoxicated on the day of his arrest and Defendant had been given his Miranda warnings. Because the trial court further concluded the period of time between Defendant's arrest and his receipt of Miranda warnings was not unreasonable, it denied Defendant's motion to suppress.

The issues are whether: (I) the evidence supports the trial

court's findings and conclusions that Defendant had been read his Miranda rights, was not intoxicated during the interrogation, and was not subjected to an unreasonable delay; (II) Defendant's statements were made while he was in police custody in violation of section 15A-501(2); and (III) the trial court erred by denying Defendant's motion to suppress because the police did not have probable cause to arrest him.

I

Defendant argues the trial court erred by denying the motion to suppress his oral and written statements because he was not advised of his Miranda rights until he had been in custody for over five hours. In fact, Defendant contends that, despite the findings of the trial court to the contrary, he was never given his Miranda rights. Defendant also argues he was intoxicated the entire day of his arrest. Moreover, even if this Court were to accept the State's evidence that Defendant received his Miranda rights, Defendant asserts the unreasonable delay prior to bringing him before a magistrate violated his constitutional rights.

"The scope of review on appeal of the denial of a defendant's motion to suppress is strictly limited to determining whether the trial court's findings of fact are supported by competent evidence, in which case they are binding on appeal, and in turn, whether those findings support the trial court's conclusions of law." *State v. Corpening*, 109 N.C. App. 586, 587-88, 427 S.E.2d 892, 893 (1993). In this case, the trial court found Defendant was given his Miranda warnings before he confessed. There is competent

evidence in the record to support the trial court's findings of fact. Corporal Shelton testified Defendant was informed of his Miranda warnings at 5:42 p.m. and again at 8:00 p.m. At both times, Defendant did not appear to be intoxicated. Furthermore, Corporal Shelton's testimony was corroborated by the juvenile rights form, in which Defendant acknowledged he understood his rights and expressed his desire to talk to the police.

The trial court also concluded that the period of time between Defendant's arrest and his receipt of Miranda warnings was not unreasonable. The trial court's conclusion was supported by Corporal Shelton's testimony that Defendant was not immediately taken to the police station because the police were locating other suspects and were trying to determine Defendant's level of involvement. Additionally, after locating other suspects, the police needed to find accommodations for three children found with the suspects. The police also searched the suspects' vehicles, their hotel, and the adjacent parking lot. Finally, Defendant was not immediately questioned because the investigator on the case was on vacation. Based on this evidence, the trial court properly concluded the period of detention before Defendant received his Miranda warnings was reasonable. Accordingly, this assignment of error is overruled.

II

We next consider whether the trial court erred by denying Defendant's motion to suppress his confession because his statements were made while in police custody in violation of

section 15A-501(2). Defendant notes that thirteen hours passed before he was taken before a judicial official. Defendant argues this delay was unreasonable, especially in light of the fact that he had not received his Miranda warnings.

Under N.C. Gen. Stat. § 15A-501(2), when a person is arrested without a warrant, he must be taken "before a judicial official without unnecessary delay." N.C.G.S. § 15A-501(2) (2001). Evidence must be suppressed if it has been obtained by a substantial violation of Chapter 15A provisions. See N.C.G.S. § 15A-974(2) (2001). "In order for mandatory suppression to apply, [however,] 'a causal relationship must exist between the violation and the acquisition of the evidence sought to be suppressed.'" *State v. Wallace*, 351 N.C. 481, 517, 528 S.E.2d 326, 348 (2000) (quoting *State v. Richardson*, 295 N.C. 309, 322, 245 S.E.2d 754, 763 (1978)). In this case, Defendant was advised of his constitutional rights before he was interrogated. "Defendant has not shown he would not have confessed had he been advised of the same rights again by a magistrate." *Id.* at 518, 528 S.E.2d at 349; *State v. Littlejohn*, 340 N.C. 750, 758, 459 S.E.2d 629, 633-34 (1995).

Furthermore, there was no unnecessary delay. As noted above, there was a delay bringing Defendant to the police station because officers were locating other suspects, conducting searches, and trying to determine Defendant's level of involvement in the crime. When the original investigating officer was not available to continue conducting the investigation, the investigation file had

to be located and reviewed. Defendant was then subjected to interrogation by the Hillsborough police who were investigating a separate robbery. Thereafter, time was spent completing the gang affiliation questionnaire and taking Defendant's statement. These activities were all part of the investigative process. See *State v. Chapman*, 343 N.C. 495, 499, 471 S.E.2d 354, 356 (1996) (delay of over ten hours not unreasonable because officers had right to conduct interrogation). Accordingly, we find there was no substantial violation of section 15A-501(2) that would require Defendant's confession to be suppressed.

III

Finally, Defendant argues the trial court erred by denying the motion to suppress his statements because the police did not have probable cause to arrest him. Defendant, however, did not bring forth this argument in his motion to suppress. Accordingly, this issue has not been properly preserved for appellate review. See *State v. Smarr*, 146 N.C. App. 44, 56, 551 S.E.2d 881, 888 (2001), ("a defendant may not assert on appeal a new theory for suppression which was not asserted at trial"), *disc. review denied*, 355 N.C. 291, 561 S.E.2d 500 (2002).

No error.

Judges TIMMONS-GOODSON and TYSON concur.

Report per Rule 30(e).